IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

APPEAL FROM ORDER NO. 185 OF 2005.

Smt.Sundari S. Shetty. ... Appellant.

vs.

The Brihan Mumbai Mahanagar Palika. ... Respondent.

R.M.Joshi for the appellant.

Ms.Geeta Joglekar for the B.M.C.

Mr.Snehal K. Shah with Shri Ramchandran i/b. Narayan & Narayan for the society.

CORAM: A.S. Oka, J.

DATED: 1st March 2005.

P.C. :

. This appeal from order is preferred by the original Plaintiff. The challenge in this appeal is to the judgment and order dated 29th January 2005 by which the learned trial Judge has declined to grant ad-interim relief in favour of the Appellant-Plaintiff. By order dated 30th December 2004 the Commissioner of Respondent No.1 Corporation has revoked the licence granted to the Appellant which was valid up to 31st December, 2004. The Appellant-Plaintiff filed suit for challenging the said order. In the suit a notice of motion for interim injunction was taken out by the Appellant-Plaintiff. A prayer for grant of ad-interim

relief was made in the said notice of motion. The prayer is for mandatory injunction to restore and renew the licence granted in the name of Royal Stores and Restaurant (Sundar Vihar). The said mandatory prayer is not granted by the learned trial Judge while considering the prayer for ad-interim relief.

2. The learned counsel for the Appellant submitted that the Division Bench of this Court has protected the Appellant by directing that if any adverse order is passed by the Municipal Commissioner, the same shall not be implemented for a period of four weeks. He submitted that as the Division Bench has granted protection to the Appellant, the learned trial Judge should have granted ad-interim relief. He submitted that merits of the case of the Appellant are not considered by the learned trial Judge.

3. As the position stands today, there is no valid licence in favour of the Appellant. The Appellant has prayed for temporary mandatory injunction directing the Respondent No.1 to grant licence or to renew the licence. In my view, such a drastic relief cannot be granted while considering the prayer for ad-interim relief.

4. Hence I find no error in the impugned order. The impugned order is a discretionary order. No interference is required with the said order.

5. Hence the appeal is dismissed with no order as to costs. Learned trial Judge will decide the notice of motion as expeditiously as possible and in any event on or before 8th April 2005. The notice of motion shall be decided on its own merits without being influenced by the observations made in the impugned order and the confirmation of the impugned order by this Court.

6. The parties and the concerned court to act on an authenticated copy of this order.

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